POSTAL RATE COMMISSION
WASHINGTON. D.C. 20268-0001

April 7, 1998

The Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
U.S. House of Representatives
B-349C Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your February 27, 1998, letter requesting the views of the Postal Rate Commission on the proposed revisions to H.R. 22, The Postal Reform Act of 1997. My fellow Commissioners and I believe that the Commission is well suited as a regulatory body to provide valuable insights related to legislative reform of the United States Postal Service. We appreciate the opportunity to share our thoughts with you.

It is our observation that H.R. 22, as revised, achieves a significantly improved balance between the benefits of providing increased flexibility to postal management and the expanded authority of the renamed Postal Regulatory Commission. Our attached views specifically address in greater detail certain internal elements of the legislation. These comments are provided within the context of changes which may best serve the public interest, and which may assist the Congress as it considers changes needed in postal policy and law.

I trust that you will understand that the brevity of these comments stems from the time constraints faced by the Commission at this time, having begun the final stages of the Omnibus Rate Case, R97-1, and having just completed consideration of MC97-5. I look forward to additional opportunities for discussion as you progress with legislative language.

With best wishes, I am

Sincerely,

Ed Gleiman

Edward J. Gleiman
Chairman

Additional Views of
the Postal Rate Commission
regarding the proposed revision to
H.R. 22, the Postal Reform Act of 1996

In general, the Commission finds the latest revision of H.R. 22 an important piece of legislation in that it addresses a phenomenon that was unforeseen when the Postal Reorganization Act (PRA) was enacted — the Postal Service, an agency of the federal government, significantly expanding the extent to which it engages in direct competition with the private sector. Similiariy, it addresses, to a somewhat iesser degree, the problem of private companies seeking to gain market share by entering into business arrangements with the Postal Service. Importantly, the revision appears to far better insulate monopoly ratepayers from Postal Service forays into private, competitive enterprises, and to help "level the playing field" where the Service has chosen to compete with the private sector. As the Commission discovered in the recently completed packaging case, MC97-5, even products and services that are "postal" in nature can potentially inflict serious economic damage on businesses in the private sector.

The following comments are arranged by Title of the Section-by-Section Analysis of the proposed revisions.

Title II. . Maintenance of legislative language to allow the postmark to be taken into consideration during Post Office closure appeals will assist many small communities by insuring their appeal is properly considered.

Title IV. We are aware that the Department of Treasury has in the past expressed reservations regarding the financial freedoms proposed in Title IV. We would encourage you to continue to work with the Department in an effort to insure that this flexibility does not provide the USPS with extraordinary opportunities beyond that envisioned.

The Private Law Corporation as conceived may not be truly independent. The new Private Law Corporation appears to derive its funds from the Competitive Products Fund, which in turn is established from the Postal Service Fund. Shares of capital stock of the Corporation can only be purchased by the Competitive Products Fund, but such purchases can be made only as the Board of the Postal Service deems appropriate. Furthermore, the Board of Directors of the Corporation are named by the Board of the Postal Service. With the suspension of 18 USC § 207 postal managers operating

[1] All references to the revision in page numbers, section numbers or by titles are assumed to be a reference to the "Section by Section Analysis: Postal Reform Act of 1997: Proposed Revisions" prepared by the House Subcommittee on the Postal Service and dated "12/11/97."

under a salary limitation could use a transfer to the Corporation as a method of circumventing certain salary restrictions and potentially create a financially lucrative situation for Board-favored senior postal management. Finally, while the Corporation is somewhat removed from the Postal Service in its purchase of stock in individual private companies, as explained above, it appears to be in no way isolated from postal management influence.

A similar problem may exist if, as it appears, the competitive products fund can be used as collateral to borrow money to establish or invest in the Private Law Corporation itself. Could the Postal Service create an excess of funds by borrowing, and then transfer that paper excess to the Corporation?

Title VI. Section 601, as revised, would "authorize" the Postal Service to forward mail on behalf of a Commercial Mail Receiving Agent (CMRA). This is one of several unusual situations (another being the postage meter industry) in which the Postal Service effectively has the ability to enact regulations that may seriously inhibit a competitor's ability to offer attractive services and operate profitably. The Commission suggests that the Service be "required" to make this change, thereby insuring non-discriminatory treatment under the law.

The ability to issue subpoenas and/or to delay an adjustment factor case in the event of the non-production of data by the Postal Service becomes even more important when viewed in light of the new, important responsibilities given the Commission. Specifying that subpoenas may be issued in complaint cases is an important clarification.

Section 604 contemplates continuation of the current policy that discount rates in the non-competitive category should "make the same per item contribution to institutional costs as the class or subclass from which it is discounted." The Commission agrees that discounts should continue to be cost-based. However, it would appear to be wise to add language such as "as nearly as practicable" to allow the development of sensible and understandable rate structures. There appears to be a similar need for language permitting flexibility in the development of rates within subclasses in baskets 2, 3 and 4 to meet the requirements for averaging at the subclass level as long as each rate change does not exceed or go below the 2 percent "cap." The current law directs that rates achieve break-even "as nearly as practicable," and the Commission has found that this leeway is essential in developing rational, user-friendly rates.

Similarly, there appears to be some tension in this section in its requirement that discount rates in the non-competitive category "make the same per item contribution to institutional costs as the class or subclass from which it is discounted" and the perception that rates in baskets 2, 3 and 4 could be set to obtain average increases at the subclass level as long as each rate change does not exceed or go below by 2

percent the rate change permitted for that year. It is unclear to us what relationship is proposed or intended by the reference to "banking" unused price adjustments when combined with the 2 percent banding requirement. This is one of the areas of the revision we feel would benefit greatly from being reviewed in legislative language.

Title X. The discussion of the revision to Section 1001 states that the "PRC would have the discretion to increase the pending rate case beyond the 10 month limitation to 16 months after consultation with the Postal Service and all other parties involved in the pending proceeding." Clarification regarding the Subcommittee's expectation of the nature and effect of this consultation would be helpful.

The modifications of the Price Cap regimen have addressed many of the issues and problems identified with H.R. 22. In essence, price caps are intended to simulate competition in a monopoly enterprise and should bring about greater productivity and efficiency from the Postal Service as well as lower and more predictable rates for ratepayers. However, the Commission feels constrained to mention that during its 27-year history it has provided, through public rate proceedings, the opportunity for any effected person to come forward and challenge cost and price assumptions. A price cap by its nature replaces these open proceedings with a mechanism to enforce efficiency. Our interest is in this area is to suggest that some procedure be included in this new regimen that will continue to provide monopoly ratepayers with the assurance of fairness and equity that the postal community has come to expect.

There continues to be an opportunity for the Postal Service to address emergency shortfalls in revenues, brought about by periods of high inflation, through an emergency case. Consideration should be given to providing monopoly ratepayers the opportunity to obtain relief should the opposite occur, i.e., the circumstance of low inflation during the 5-year adjustment factor period during which small increases in the CPI might still allow the Postal Service to accumulate excess profits.

Clarifying changes made regarding the transfer of products between the competitive and noncompetitive categories (page 34) greatly enhance the revision. The analysis provides an improved description of characteristics that distinguish noncompetitive mail products from competitive ones, and the specific explanation of how mail products may be transferred either into or out of those categories removes a sources of potentiai dispute. One remaining possrbie source of confusion could be eliminated if it were made clear in the legislative language that when appropriate, transfers may involve the division of existing subclasses between competitive and noncompetitive products.

The application of anti-trust laws to some aspects of Postal Service operations is a essential aspect of HR 22. Agencies with the responsibility for enforcing current laws might be able to provide useful input on whether additional specificity is needed to assure that jurisdiction exists to prevent the full range of anti-competitive practices.

Both the Justice Department and the Federal Trade Commission could consider whether the current provisions are adequate to prevent "tying" between competitive and monopoly products. Another important issue is whether jurisdiction over deceptive practices is clearly lodged with an existing agency, and whether such review might best be done by the Postal Regulatory Commission, which is already slated to be responsible for reviewing Postal Service success in meeting published service standards.

Page 40 appears to indicate a mechanism by which the Commission could obtain data to enable it to re-evaluate the attribution of costs and to review whether the baseline case continues to accurately depict the extent to which various subclasses and services cause costs. This is very important because if the goal of the price cap regimen is to induce the Postal Service to operate more efficiently, then it may be necessary periodically to revisit the assumptions and findings contained in the baseline rate case. It is not clear as to when. how or at whose instigation such a re-evaluation is expected to take place.

Universal Service. After serious consideration, the Commission doubts that a one year time frame would be sufficient to address the issue of universal service from ground zero. The Commission recommends that the Postal Service be required to initiate the proceeding to define and quantify universal service by providing a study containing its views along with any necessary supporting data, and that the Commission have one-year from the date of the Postal Service submission to complete the final report. As an alternative, an extension to the one-year time period (similar to those applicable in the complaint and adjustment factor cases) should be available to allow the Service time to produce necessary information or data.

Other Matters. The revision appears to give the Commission final decision authority in complaint cases. We view that authority essential if the complaint procedure is to have any credibility. The complaint process is discussed in several places throughout the section-by-section analysis and review will be facilitated once consolidated legislative language is available. The Commission is concerned that, depending on the nature and complexity of the issues involved, in some instances the proposed 90-day limit on the complaint hearing process might not allow enough time for a hearing on the record under §§ 556-557 of the Administrative Procedures Act.

In the definition of postal products, on page 43, it would be helpful to have clarification on the definition of a "letter," as well as the intended effect of the weight limitations on packages as contained in the revisions.

Finally, the Subcommittee may want to address more clearly the financial independence of the Commission. Our view is that funding for the Commission should continue to be provided out of Postal Service revenues, and not from the Federal

Treasury. However, our ability to complete the tasks assigned by HR 22 in a timely and thorough fashion could be frustrated should a dispute arise between the Directors and the Commission over the appropriate level of funding for our agency. Consideration should be given to enacting a permanent authorization from the Postal Service Fund for any year when the Directors reject a significant portion of the Commission budget request. This would assure that the Commission would continue to fulfill its functions while providing Congress with the opportunity to reevaluate the appropriate scope of Commission activities.